

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

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| STATE OF OHIO, | : | APPEAL NO. C-140353 |
| | | TRIAL NO. 13CRB-34575 |
| Plaintiff-Appellee, | : | |
| | | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| ANTONIO SMITH, | : | |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, defendant-appellant Antonio Smith was convicted of theft under R.C. 2913.02(A)(1). At trial, Cincinnati Police Officer Les Mendes, who was working a detail at Walmart, testified that he saw Smith on a video camera remove the tag from a pair of sunglasses and place them on his face. Officer Mendes also saw Smith pick up a box of eye drops, although because of the camera angle, he did not see Smith conceal the eye drops. When Smith left the store, Officer Mendes confronted him. Smith admitted that he had not paid for the sunglasses, and Officer Mendes found the eye drops in Smith's coat pocket.

Smith presented an alibi defense. He and his fiancée, Damita Engram, testified that Engram had been discharged that day from the hospital after giving birth to twins. They had taken the children to their home, which was located about 20 to 25 minutes by car from the Walmart, and had been receiving visitors at the time the theft had allegedly occurred. Smith also testified that his brother had impersonated him in the past. He

stated that his state identification card had been missing since his brother had helped them move, several months prior to the offense.

Smith now appeals his conviction, raising two assignments of error. In his first assignment of error, Smith contends that the state's evidence was insufficient to support his conviction. He argues that the state failed to present sufficient evidence identifying him as the person who had committed the theft. But Officer Mendes specifically identified Smith as the individual with the sunglasses and the eye drops that he had detained. He said that a picture of Smith he had obtained from RCIC matched the individual he had detained. Further, Smith acknowledged that he had some unique identifying characteristics, including a missing front tooth and several specific tattoos. Thus, the state presented sufficient evidence showing that Smith was the perpetrator of the offense.

Smith argues that the state did not present into evidence the stolen merchandise, a security video showing the theft, or testimony from a store representative to corroborate the officer's testimony. But corroboration goes to the issue of credibility. In deciding if the evidence was sufficient, we neither resolve evidentiary conflicts nor assess the credibility of the witnesses. *State v. Thomas*, 1st Dist. Hamilton No. C-120561, 2013-Ohio-5386, ¶ 45.

The record shows that a rational trier of fact, after viewing the evidence in a light most favorable to the prosecution could have found that the state had proved beyond a reasonable doubt all of the elements of theft under R.C. 2913.02(A)(1). Therefore, the evidence was sufficient to support the conviction. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *State v. Carmen*, 1st Dist. Hamilton No. C-120692, 2013-Ohio-3325, ¶ 10.

Smith also argues that his conviction was against the manifest weight of the evidence. After reviewing the record, we cannot say that the trial court lost its way and

created such a manifest miscarriage of justice that we must reverse Smith's conviction and order a new trial. Therefore, the conviction was not against the manifest weight of the evidence. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *Carmen* at ¶ 10.

Smith primarily argues that his evidence was more credible, but the trial court specifically stated that it found the police officer's testimony to be more credible than that of Smith's witnesses. Matters as to the credibility of evidence are for the trier of fact to decide. *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 801 N.E.2d 433, ¶ 116; *Thomas*, 1st Dist. Hamilton No. C-120561, 2013-Ohio-5386, at ¶ 48. Consequently, we overrule Smith's first assignment of error.

In his second assignment of error, Smith contends that he was denied the effective assistance of counsel. Smith has not demonstrated that his counsel's representation fell below an objective standard of reasonableness or that, but for counsel's unprofessional errors, the result of the proceeding would have been otherwise. Therefore, he has failed to meet his burden to show ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687-689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Davenport*, 1st Dist. Hamilton No. C-130307, 2014-Ohio-2800, ¶ 61.

Smith argues that his counsel was ineffective for failing to obtain a certified copy of the hospital discharge papers for Engram and the twins that showed the time of discharge. But both Smith and Engram testified about the time they left the hospital. Further, Engram acknowledged that the document showed that she and the twins were discharged, but it did not show that Smith was present at that time. Thus, Smith has not shown that a reasonable probability existed that but for counsel's alleged error, the result of the proceeding would have been different. *Strickland* at 694; *Thomas* at ¶ 52. Consequently, we overrule Smith's second assignment of error and affirm his conviction.

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A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on April 1, 2015
per order of the court _____.
Presiding Judge

